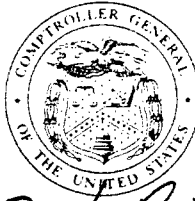


17888

Mr. Ayer

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest of Bid Rejection as Nonresponsive]

FILE: B-200724

DATE: April 27, 1981

MATTER OF: Air-A-Plane Corporation

DIGEST:

1. Bidder cannot disregard instruction to make entry in blank space of IFB merely because space contains asterisk, where asterisk does not in itself constitute a meaningful entry since, in absence of meaningful entry, space is essentially blank.
2. Agency properly rejected bid as nonresponsive where it is not clear on face of bid that price bid on one aspect of first article requirement (units) included price of two remaining aspects (testing and reports) of requirement which bidder failed to bid.

Air-A-Plane Corporation (AAP) [protests the Army's rejection of its bid under invitation for bids] (IFB) No. DAAB07-80-B-1382 issued by the Communications and Electronics Materiel Readiness Command, Fort Monmouth, New Jersey.

[The Army found the bid nonresponsive for failure to enter a bid on each of two parts of the IFB's three-part first article requirement.] Two issues are presented. First, can a bidder properly disregard the two omitted entries and still comply with the terms of the IFB. Second, if the IFB requires the two omitted entries, is their omission waivable as a minor informality. AAP contends that: (1) it was not required to bid the two parts since the IFB only required bidders to fill in blank entries on the pricing schedule and the spaces provided for the omitted entries

046663

115040

were not blank; and (2) even if AAP was required to bid the two omitted parts, its failure constituted at most a waivable, minor informality because AAP was clearly obligated by its bid on the third part to perform the work encompassed within the two omitted parts.) We find that the rejection was proper because it is not clear that, in the absence of the omitted prices, AAP was legally obligated to perform the entire first article requirement.

PRICING INSTRUCTIONS

The IFB contains standard form 33, which states:

"* * * the undersigned [Bidder] offers and agrees * * * to furnish any and all items upon which prices are offered, at the price set opposite each item * * *"

The IFB further contains three specific sets of pricing instructions (PI). PI 1 (Section E.1, Information to Bidders/Offerors) explains that the pricing schedule consists of two general categories; namely, contract line items (CLIN) and associated alpha suffix subline items (SLIN). For example, where the CLIN reads "0001," the SLIN would read "0001AA." Bidders are advised that the CLIN's only function as common denominators for the accumulation of management data. They are further told that the requirements to be bid are set out in the associated SLIN's and that all prices are to be entered at the SLIN level. Each SLIN consists of a group of 19 blocks setting out, among other things, the SLIN number (Block 4), the unit price (Block 7), the total item amount (Block 8), the item's name (Block 15), and descriptive data associated with the particular item or SLIN (Block 19).

PI 2 (Section C.83.1, Notice: Unit Price/Total Item Amount Blocks) details how bidders are to make their entries at the SLIN level and reads, in part, as follows:

"a. Except as stated in b below, in all SLIN's Blocks 7 and 8 must be completed with either 'N' (Not Applicable),

'NSP' (Not Separately Priced), or a price. When 'N' or 'NSP' is placed in Block 7 by either the Government or the offeror, Block 8 must still be completed. DO NOT LEAVE BLOCK 7 OR 8 BLANK UNDER ANY CIRCUMSTANCES. Failure to follow this instruction will render the bid nonresponsive.

"b. Further, if the solicitation/contract includes both First Article and Progress Payments provisions, the offeror is required to complete WITH A PRICE those Blocks 7 and/or 8 for First Article SLIN's which have been left blank in the solicitation. If the offeror inserts 'N' or 'NSP' in such blocks, no progress payments will be made until First Article approval has been obtained * * *."

PI 3 (Section D.32, Evaluation of Bids/Offers) provides:

"A bidder/offeror must quote on all items in this solicitation to be eligible for award. All items will be awarded only as a unit. Evaluation of bids/offers will be based, among other factors, upon the total price quoted for all items."

FIRST ARTICLE REQUIREMENT

The Army's requirement for first article was found under CLIN 0004 at Block 19 as follows:

"First Article Requirement:
Fabrication and testing of Modification Kits * * * IAW [in accordance with] Attachment 1, including test procedure and test reports as set forth in SLINS 0004AA, 0004AB, 0004AC and Sections F and L. The quantity of First Article required is set forth in SLIN 0004AA."

The three associated SLIN's had the following Block 15 name designations: "1ST ARTICLE" (0004AA); "1ST ART TST" (0004AB); and "TEST REPORT" (0004AC). The three SLIN's contained a warning at Block 19 concerning the adverse consequences on progress payments of a bidder entering either "N" or "NSP" in Block 8. AAP's contentions focus on the fact that two of the three SLIN's contained an asterisk at Block 8 which referred the bidder to the Block 19 warning whereas the third SLIN, 0004AA, did not have an asterisk at Block 8 although it contained the same warning in Block 19.

AAP'S OMISSION

In bidding the first article requirement, AAP only entered a price in SLIN 0004AA's (hereafter 4AA) Block 8, leaving the Block 8 of SLIN 0004AB (hereafter 4AB) and SLIN 0004AC (hereafter 4AC) blank. AAP also qualified its bid on 4AA with the following notation:

"NOTE: Price for first article is based on award of production quantity in addition to first article quantity."

Neither 4AB nor 4AC contained similar AAP notations.

AAP ARGUMENT/ARMY RESPONSE - FIRST CONTENTION

[AAP contends that its bid is fully responsive to the solicitation's requirements, since it did precisely what the IFB required.] AAP states:

"Black's Law Dictionary defines the word 'blank' as 'a space left unfilled in a written document, in which one or more words or marks are to be inserted to complete the sense.'" (Emphasis AAP's.)

Focusing on PI 2's direction that the bidder must "complete WITH A PRICE those Blocks 7 and/or 8 for

First Article SLIN's which have been left blank," AAP argues that a bidder can reasonably expect to find that one or more Blocks 8 have not been left blank. Working from this premise, AAP states that this expectation was confirmed by its examination of the first article for Block 8 of 4AB and 4AC since both contained asterisks while Block 8 of 4AA was blank. AAP urges that the asterisks can only reasonably be deemed to serve as devices or marks used to fill the blanks and that they should not be deemed to refer to the warning in Block 19 since all three Blocks 19 contain the warning while only two of the three Blocks 8 contain the asterisk. Therefore, AAP concludes that PI 2's warning, "DO NOT LEAVE BLOCK 7 OR 8 BLANK UNDER ANY CIRCUMSTANCES," is inapposite because it is conditional upon the existence of a blank and there were no blanks.

The Army responds to AAP's contentions by taking the position that the IFB and not the dictionary should be the point of reference in determining the meaning of "blank." PI 2 states:

"* * * all SLIN's Blocks 7 and 8 must be completed with either N (Not applicable), NSP (Not Separately Priced), or a price."

In the Army's view this defines "blank." In other words, an entry, no matter what other material it might contain, was blank unless and/or until it contained either N, NSP, or a price. Here, the Army points out that the asterisk is traditionally and in normal usage nothing more than a warning that information concerning the thing asterisked is to be found elsewhere on the page. The Army reports that it is only the result of a typographical error that there was no asterisk in 4AA's Block 8 when it was in Blocks 8 of 4AB and 4AC, since all three Blocks 19 contained the same warning.

ANALYSIS - FIRST CONTENTION

AAP's (and Black's) definition of "blank" provides a sufficient basis upon which to resolve AAP's first

contention. It is clear from the definition that a blank is deemed to remain blank until there is inserted a word or mark which completes the sense of the document. If the asterisks in Blocks 8 of 4AB and 4AC refer to the Block 19 warning, the sense of the document remains incomplete until something further is added, i.e., even with the asterisk the blank fails to convey to the Government the kind of information sought. On the other hand, if the asterisks do not refer to the warning, they refer to nothing and the result is the same, i.e., the blank is still blank, since solitary asterisks cannot be deemed to complete the sense of the pricing entry. In either event, [we believe that the terms of the IFB clearly required AAP to fill in the Blocks 8 of 4AB and 4AC in a meaningful way notwithstanding the presence of the asterisks.]

AAP ARGUMENT/ARMY RESPONSE - SECOND CONTENTION

AAP believes its failure to bid 4AB and 4AC is waivable as a minor informality because AAP's bid as submitted clearly obligated AAP to perform the total first article requirement. AAP argues that 4AA (which AAP bid) encompasses the entire first article requirement by virtue of (1) 4AA's Block 19 which reads in part:

"First Article IAW requirements set forth in Items 0001, 0002 and 0003 and Section F, including acquisition of parts, materials, fabrication and assembly. See Sections F and L for disposal instructions * * *"

and (2) section "F" which sets out the technical requirements for first article testing including the requirement for submission of copies of the first article test report in a prescribed format. AAP concludes that since 4AB and 4AC were merely repetitive of 4AA, to which AAP was legally bound, the absence of separate prices for 4AB and 4AC did not compromise the Government's right to receive

performance of the entire first article requirement. Moreover, AAP urges that its note, to the effect that its price for the first article was conditioned on its receipt of the award of a production quantity in addition to the first article quantity, manifests AAP's recognition of the total first article requirement and its agreement to meet that total requirement, including testing and reports.)

In support of its position, AAP cites Abbott Power Corporation, B-186659, August 26, 1976, 76-2 CPD 193 (Abbott), for the proposition that failure to separately price first article test reports is not fatal to the responsiveness of a bid if the bidder is clearly obligated to perform the entire first article.) In light of Abbott, AAP asserts that the contracting officer is obliged by Defense Acquisition Regulation (DAR) § 2-405 to either allow AAP to fill in the missing entries or to waive the omission as a minor informality.) AAP further contends that the facts here fall within our decision in 52 Comp. Gen. 604 (1973) where correction of a bid omission was allowed on the ground that the bid, as submitted, established a definite and easily recognizable pattern of prices which clearly indicated that omission of the price was inconsistent with the pattern and that the allegedly intended price is the only price compatible with the pattern.) AAP apparently takes the position that its action in bidding only 4AA is tantamount to bidding NSP for both 4AB and 4AC and that to hold otherwise would amount to converting an obvious clerical error of omission into a matter of responsiveness.

(The Army urges that, on its face, AAP's bid was unclear regarding AAP's legal obligation to provide the 4AB ((testing)) and 4AC ((report)) aspects of the first article.) The Army finds AAP's argument, that 4AA incorporates section "F" and all testing and report requirements set out therein by reference, unreasonable on the ground that section "F" includes too many other aspects of the procurement, aside from the first article associated aspects, to reasonably be deemed to incorporate any specific aspect in its

entirety.) For example, section "F" treats aspects of the procurement other than the first article requirements, which are priced under entirely distinct SLIN's. The Army finds it difficult to believe that a bidder bidding 4AA would be binding itself to SLIN's 0005AA, 0006AA, and 0007AA just because section "F" made reference to aspects of those requirements as well. The Army's intent in generally referencing section "F" was to avoid the listing of individual applicable provisions. The Army reports that first article testing may be performed by either the contractor or the Army. The IFB clearly indicates that the Army wanted the contractor to perform the testing; however, in the Army's opinion, it is unclear that the contractor agreed to perform this aspect of the first article requirement in the absence of a meaningful entry. Moreover, AAP's note qualifying its bid on 4AA fails, in the Army's opinion, to clarify the ambiguity since the standard form 33 couched the bidder's offer in terms of an obligation to furnish only the items which the bidder priced. The Army believes that AAP's above-mentioned note could be reasonably construed as referring only to units of the first article as opposed to tests and reports on the units furnished.

The Army distinguishes Abbott on the ground that in Abbott the entries were completed in a meaningful way with NSP (not separately priced) and were not left blank. The Army also doubts that 52 Comp. Gen. 604, supra, is apposite since there are no other items of the same kind in the bid against which a comparison can be made for purposes of establishing a pattern.

ANALYSIS - SECOND CONTENTION

[Although AAP argues that 4AA should be viewed as a paramount or total price for the entire first article requirement, as the Army has indicated, there is not sufficient information in the bid to conclude that the price for 4AB and 4AC was included in the price quoted for 4AA. Consequently, we are of the view that insufficient information was present concerning the total price of the first article to justify waiver of the requirement to price the testing and reports.] See Radalab, Inc., B-188331, July 26, 1977, 77-2 CPD 50.

In the circumstances, and because we agree with the distinctions the Army made with regard to the Abbott and 52 Comp. Gen. decisions, we concur that the Army was correct in not waiving the failure to bid on 4AB and 4AC.

Accordingly, the protest is denied.

Milton J. Fowler

Acting Comptroller General
of the United States